

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOHAMMAD SAAILI SHIBIN,
a/k/a "Khalif Ahmed Shibin,"
a/k/a "Mohammad Ali,"
a/k/a "Ali Jama,"

Defendant.

CRIMINAL CASE NO.
2:11cr33

TRANSCRIPT OF PROCEEDINGS
(Testimony of Robert R. Henley)

Norfolk, Virginia
April 24, 2012

BEFORE: THE HONORABLE ROBERT G. DOUMAR,
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Joseph E. DePadilla, Esquire
Benjamin L. Hatch, Esquire
Brian J. Samuels, Esquire
Paul Casey, Esquire
Assistant United States Attorneys
Counsel for the United States

ZOBY & BROCCOLETTI, P.C.
By: James O. Broccoletti, Esquire
Counsel for the Defendant

I N D E X

ON BEHALF OF THE GOVERNMENT:	Direct	Cross	Red.	Rec.
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—R. Henley - Direct—

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THE COURT: Who is your next witness?

4

MR. HATCH: Robert Henley, Your Honor.

5

(The witness was sworn by the clerk.)

6

7

ROBERT R. HENLEY, called as a witness, having been
first duly sworn, testified as follows:

8

DIRECT EXAMINATION

9

BY MR. HATCH:

10

Q. Good morning, sir. Could you please state your name for
the record?

11

12

A. Good morning. My name is Robert R. Henley.

13

Q. And how are you employed?

14

A. I'm employed with the Federal Bureau of Investigation.

15

Q. And how long have you been with the FBI?

16

A. I've been with the FBI for five years.

17

Q. What is your title?

18

A. Special Agent.

19

20

Q. And directing your attention to the February, 2011, time
frame, what unit were you working in with the FBI at that
time?

21

22

A. At that time I was working with the Counterterrorism
Division with the Fly Team.

23

24

Q. Can you just give the jury an idea as a Fly Team member
kind of what are your duties?

25

—R. Henley - Direct—

1 A. Our duties with the Fly Team were based in certain areas
2 of the world to help. For instance, we'd collect evidence
3 for the FBI or conduct interviews for the FBI, but a lot of
4 times we're staged in different regions of the world so that
5 way we can quickly react to whatever we are requested to
6 respond to.

7 Q. Okay. Is part of that reaction flying places a lot?

8 A. That is true. That's why we get the name the Fly Team,
9 is that's usually how we get there, is by flying.

10 Q. Again sticking with that February 2011 time frame, where
11 were you physically stationed at that time?

12 A. At that time I was out of the LEGAT office, the Legal
13 Attache Office, at the American Embassy in Nairobi, Kenya.

14 Q. Now, did you become involved in the response to the Quest
15 hijacking incident?

16 A. Yes, I did.

17 Q. And approximately -- did you fly?

18 A. Yes, I did.

19 Q. And when did you get out there to that scene?

20 A. I arrived at -- on February 21st of 2011 I arrived on the
21 USS Sterett.

22 Q. Okay. Did you go immediately to the Sterett, or did you
23 go somewhere else first?

24 A. Actually, just -- I left from Nairobi, Kenya, flew into
25 Djibouti, then went from Djibouti to Oman, the country, then

—R. Henley - Direct—

1 went from Oman and flew onto the United States -- or the USS
2 Enterprise, and then flew from the USS Enterprise over to the
3 destroyer, the USS Sterett.

4 Q. Okay. And what did you take to get from the Enterprise
5 to the Sterett?

6 A. A helicopter.

7 Q. Now, as you arrived there on the Sterett on the 21st what
8 was your role in the ongoing operation?

9 A. My role when I first arrived was to conduct some
10 interviews on some of the suspected pirates that they had
11 taken into custody the day before the incident.

12 Q. Now, were these two individuals who had come over?

13 A. Yes, they were.

14 Q. Now, were these two individuals -- they weren't
15 cooperating at that point. Is that correct?

16 A. That is correct, they were not cooperating.

17 Q. All right. Now, let me take you to the next morning,
18 February 22nd. What were you doing that morning?

19 A. On February 22nd I was continuing with interviews on the
20 subjects from the day before that were not cooperating.

21 Q. And did there come a time when your interview was
22 interrupted?

23 A. That is correct, there was a time.

24 Q. And what interrupted it?

25 A. Somebody aboard the vessel that I was on, the Sterett,

—R. Henley - Direct—

1 told me -- I believe it was one of the U.S. Navy SEALs --
2 said that a rocket-propelled grenade, an RPG, was going to be
3 fired at the vessel.

4 Q. Okay. So what did you do then?

5 A. At that time we ceased the interview, because the area
6 that we were in was in proximity of possibly being hit by the
7 RPG, so we stopped the interview.

8 Q. Okay. And where did you go after that?

9 A. At that time I went up to the area that's known as the
10 bridge of the ship.

11 Q. When you arrived at the bridge what was the situation out
12 on the sea where the Quest was?

13 A. At that time the United States Navy SEALs had already
14 made their boarding of the Quest.

15 Q. Were you called upon to take some actions with respect to
16 the Quest that day?

17 A. Yes, I was.

18 Q. And what were they?

19 A. They were to board the Quest as well and to preserve
20 evidence.

21 Q. So can you give the jury a sense of how long after the
22 SEALs had taken control of the Quest -- about how long was it
23 after that that you yourself went on board the Quest?

24 A. I would say around 30 minutes after the time that they
25 had -- 15 to 30 minutes from the time that they had boarded

—R. Henley - Direct—

1 until when I boarded the vessel.

2 Q. And how did you get over there?

3 A. By what they call a RHIB, a rigid-hull inflatable boat,
4 from the Sterett over to the Quest.

5 Q. Now, can you tell the jury, what steps did you generally
6 take in your effort to preserve that crime scene?

7 A. Generally, I looked for any items of evidence that may be
8 damaged or that would not be able to make it back to port and
9 took some photographs.

10 Q. Okay. Let me hand up to you, if I could, at this time
11 two government's exhibits in series 2-3 A through 2-3 H.
12 And, if you could, just look through those and then look up
13 when you're done.

14 (There was a pause in the proceedings.)

15 THE WITNESS: Yes, sir.

16 BY MR. HATCH:

17 Q. Agent Henley, do you recognize all those exhibits?

18 A. Yes, I do recognize them.

19 Q. And what are they, generally?

20 A. These are, generally, pictures taken aboard the Quest.

21 Q. And who took them?

22 A. The majority of these photographs were taken by myself.
23 I notice that a couple of these photographs were taken by the
24 person who assists me in taking the photographs.

25 Q. And what was the name of that individual?

—R. Henley - Direct—

1 A. That was Brian Maliszewski.

2 Q. Is he also with the FBI?

3 A. He is.

4 Q. Now, whenever Brian Maliszewski was taking a picture were
5 you also present for that?

6 A. Yes. He was actually doing the photo log for me while I
7 was taking the photos.

8 Q. Are the pictures in Government's Exhibits 2-3 A through
9 2-3 H fair and accurate pictures of what you saw on that
10 morning of February 22nd on the Quest?

11 A. Yes, they are.

12 MR. HATCH: Your Honor, I'd move in Government's
13 Exhibits 2-3 A through 2-3 H.

14 THE COURT: 2-3 A through 2-3 H are admitted into
15 evidence.

16 (The exhibits were admitted into evidence.)

17 MR. HATCH: If I may publish, Your Honor.

18 THE COURT: You may.

19 BY MR. HATCH:

20 Q. Let's start with 2-3 A. And, Agent Henley, if you would
21 like, you should have a screen there as well. Either one you
22 can use.

23 Can you tell the jury what is 2-3 A showing?

24 A. This is the suspected pirates that had been detained, and
25 they're on top of the Quest in the bow area.

—R. Henley - Direct—

1 Q. And are they secured at this point?

2 A. Yes.

3 Q. Now, that day were the suspected pirates taken off the
4 Quest at some point?

5 A. Yes, they were.

6 Q. And where were they moved to after that?

7 A. At that time -- the next time that I saw the pirates they
8 were aboard the Enterprise, so I'm not sure exactly, you
9 know, how they got to the Enterprise. But at some point they
10 made it to the Enterprise.

11 Q. And were all of the suspected pirates secured when you
12 arrived on the ship?

13 A. Yes, they were.

14 Q. Okay. Now I'm showing you 2-3 B. Can you tell the jury
15 what this bag contains?

16 A. It's rocket-propelled grenades, the actual projectiles.

17 Q. Do you recall how many of them, approximately, you saw?

18 A. No, I don't.

19 Q. Now, were those rocket-propelled grenades in the bag when
20 you arrived?

21 A. Yes, they were.

22 Q. 2-3 C. Agent Henley, can you tell the jury what this
23 item I'm indicating with the red arrow there is in the center
24 of the screen?

25 A. That is the actual launcher or the launching tube of the

—R. Henley - Direct—

1 rocket-propelled grenade, so that's what the actual grenade
2 would go onto.

3 Q. And what portion of the ship was this grenade launcher
4 located in?

5 A. This was the rear portion or the aft portion of the
6 vessel.

7 Q. Okay. Now I'm showing you 2-3 D. Agent Henley, can you
8 tell the jury which portion of the ship are we looking at
9 now?

10 A. You are looking in the wheelhouse area, if you're looking
11 towards the rear of the vessel.

12 Q. Okay. And let me ask you, by the time you came onto the
13 Quest were any of the American hostages still there?

14 A. There -- yes.

15 Q. Okay. But when you took these pictures were they still
16 present?

17 A. No, they were not.

18 Q. And what happened to the hostages that were there when
19 you came on board?

20 A. They were in the -- when I was coming on board the Quest
21 they were in the process of rendering medical treatment to
22 them and air-lifting them off of the -- so there were
23 still -- a few of them had been taken off, and I believe
24 there was at least one that was still on the rear of the
25 Quest when I first got onto the vessel.

—R. Henley - Direct—

1 Q. Now, what's this item again with the red arrow here in
2 the center of the screen?

3 A. It's an AK-47, a rifle.

4 Q. I'm showing you 2-3 E. What portion of the ship are we
5 in now?

6 A. You're still in the same area. You're in the wheelhouse,
7 but you're looking down from -- as if you're above the
8 wheelhouse.

9 Q. Okay. Now, what's this item I've just indicated with the
10 first red arrow?

11 A. That is another AK-47.

12 Q. Now, I'm indicating with the second arrow -- there
13 appears to be an individual in the lower left-hand corner.
14 Is that correct?

15 A. That is correct.

16 Q. Now, were there suspected pirates who were deceased when
17 you came onto the Quest?

18 A. Yes, there were.

19 Q. And do you recall how many of them there were?

20 A. There were four.

21 Q. And is this one of those individuals?

22 A. That is correct.

23 Q. I'm showing you 2-3 F. Now, what portion of the Quest
24 are we in now?

25 A. This is below -- the below area of the Quest, so it's the

—R. Henley - Direct—

1 next level down from the deck.

2 Q. Now, this one is a little bit blurry. Were there some
3 difficulties you encountered taking pictures that day?

4 A. That is correct.

5 Q. And what caused the difficulty?

6 A. The difficulty is the lighting conditions. When you move
7 from the natural light above down below in the Quest you need
8 to either provide more light for the -- so that way your
9 shutter stays open longer or faster, or you -- basically, you
10 don't have as much light, so you have to hold the camera
11 still. And then with the -- we had the heavy sea state that
12 day. The boat was rocking considerably, so it was hard to
13 get a good, steady photo with the lighting conditions and the
14 sea state.

15 Q. Okay. I put a red arrow there toward the center of
16 2-3 F. What's that arrow pointing to?

17 A. That's an AK-47.

18 Q. I'm showing you 2-3 G. Now, what area of the ship are we
19 in now?

20 A. We're in the same area.

21 Q. And what's the perspective of this picture? Are you
22 looking down to the floor or to the side?

23 A. You're looking down toward the floor, and this is the
24 wall that you see in the -- basically, where the arrow is
25 drawn, the red arrow, that's the wall.

—R. Henley - Direct—

1 Q. And what is the arrow pointing to?

2 A. That is another AK-47.

3 Q. Okay. And does there appear to be an individual I've
4 indicated with the second arrow?

5 A. That is one of the deceased suspected pirates.

6 Q. And is this -- this is a different individual from the
7 one that we saw earlier in Government's Exhibit 2-3 E,
8 correct?

9 A. That is correct.

10 Q. Now I'm showing you Government's Exhibit 2-3 H. Agent
11 Henley, tell the jury what this picture is showing.

12 A. It is again showing the level below the deck, the second
13 level down, and it's showing approximately three AK-47s on
14 the floor.

15 Q. And are the red arrows that I've put in there pointing to
16 the three AK-47s?

17 A. That is correct.

18 Q. Now I'd like to hand up, if I could, 2-3 J, K and L.
19 Agent Henley, do you recognize those photographs?

20 A. Yes, I do.

21 Q. And who took those photographs?

22 A. I took these photographs.

23 Q. And what are they of, generally?

24 A. These are generally of the Quest, of the outside of the
25 Quest.

—R. Henley - Direct—

1 MR. HATCH: Your Honor, at this time I would move in
2 Government's Exhibits 2-3 J, K and L.

3 THE COURT: 2-3 J, K and L, the outside of the Quest
4 photographs, are admitted into evidence.

5 (The exhibits were admitted into evidence.)

6 MR. HATCH: And, Your Honor, I'll also show the
7 witness 2-3 I, which was previously admitted as well.

8 THE COURT: 2-3 I? He hasn't identified 2-3 I, has
9 he?

10 MR. HATCH: Well, it was already admitted, and I'll
11 ask him about it now, Your Honor. It was admitted during
12 Ms. Sem's testimony.

13 THE COURT: All right. Let's move along.

14 BY MR. HATCH:

15 Q. Agent Henley, for the benefit of the Court and the jury,
16 can you tell them what Exhibit 2-3 I, that you see on your
17 screen there, is?

18 A. That's the outside of the Quest.

19 Q. And is this one of the pictures that you yourself took
20 that day?

21 A. That is one of the pictures, as well, that I took that
22 day.

23 Q. And when did you take the pictures of the outside of the
24 Quest in relation to these other pictures we've already seen?

25 A. This was at the very end of the day, approximately

—R. Henley - Direct—

1 6:00 p.m.

2 Q. And, so, did you take these as you were leaving the
3 Quest?

4 A. Yes, I did.

5 Q. I'm showing you 2-3 J. What's 2-3 J?

6 A. That is the rear portion of the Quest.

7 Q. And then what's this other ship that's in the right-hand
8 side of that picture?

9 A. That is the USS Sterett.

10 Q. Now, was there a plan to try to get the Quest back to an
11 area where it could be completely processed for evidence?

12 A. Yes, there was.

13 Q. What are your limitations on processing for evidence as
14 they existed out on the high seas?

15 A. That limited me to whatever I could carry aboard, which
16 was -- and then also the stability of the ship limited me as
17 far as processing it.

18 Q. So what was the initial plan on how the Quest would be
19 taken back to port?

20 A. The initial plan was for them to secure the Quest at the
21 back of the Sterett, so basically it would be towed back to
22 port in Djibouti.

23 Q. And did that towing process ultimately work?

24 A. It did not work. It worked for a few hours, but then it
25 failed to work.

—R. Henley - Direct—

1 Q. And then what -- do you know what happened after that to
2 get it back?

3 A. From the time after that my photo assistant that I
4 discussed, Brian Maliszewski, he, along with other sailors,
5 ended up sailing the Quest back to Djibouti.

6 Q. And then let me show you 2-3 K quickly. Is this another
7 picture of the Quest and the Sterett?

8 A. Yes, it is.

9 Q. And 2-3 L?

10 A. Yes, it is.

11 Q. And I'm going to apply a red arrow here. Is that line
12 part of that attempted towing process you just described?

13 A. Yes, it is.

14 Q. Now, based on your work on the Quest on the 22nd, what
15 did you do to try to preserve the physical -- did you take
16 physical items of evidence that didn't appear to be related
17 to the military off the Quest?

18 A. Nothing that didn't appear to be related to the military.

19 Q. To the U.S. military, right?

20 A. Correct.

21 Q. So for the physical evidence that you saw on the Quest
22 what steps did you take to try to preserve it?

23 A. Basically, moved any items that were -- that appeared to
24 be -- that would fall off the vessel, move them away from the
25 side of the vessel into a secure area.

—R. Henley - Direct—

1 Q. And did you do anything with the firearms that you found
2 to secure those?

3 A. Basically, unloaded the firearms, took the ammunition
4 that was in the chamber out of the chambers to make them safe
5 for other people that were working around the firearms from
6 that day on.

7 Q. Now, let me ask you, that morning of the 22nd when you
8 were on the Quest did you do anything to try to confirm what
9 position you were in on the Quest?

10 A. Yes, I did.

11 Q. And by "position" I mean relative to the seas to Somalia.

12 A. Sure.

13 Q. And, so, did you obtain information about the GPS or the
14 longitude and latitude of the ship that morning?

15 A. Yes, I did.

16 Q. Handing you Government's Exhibit 2-3 N, can you tell the
17 Court and jury what Government's Exhibit 2-3 N is showing?

18 A. 2-3 N is depicting the location that the Quest was in
19 when I got the lat/longitude coordinates for our location, so
20 it's basically that location has been plotted onto the map.

21 MR. HATCH: Your Honor, at this time I would offer
22 2-3 N into evidence.

23 THE COURT: 2-3 N is received in evidence, showing
24 the location of the Quest at the time.

25 (The exhibit was admitted into evidence.)

—R. Henley - Cross—

1 BY MR. HATCH:

2 Q. And now I'm going to blow up a box for you there. Could
3 you tell the jury what does that red dot indicate?

4 A. The red dot basically indicates the location --
5 approximate location in reference to those latitude/longitude
6 coordinates that are basically on the map there. That's the
7 approximate location of the Quest.

8 Q. And, so, that was the location of the Quest that morning
9 of the 22nd?

10 A. That is correct.

11 Q. Now, can you tell the jury on the key of this map what
12 does this blue line that I'm indicating with an arrow that
13 runs all the way up and around the coast of Somalia -- what
14 does that denote?

15 A. That denotes, basically, the 12-nautical-mile limit to
16 the coast.

17 MR. HATCH: The Court's indulgence.

18 (There was a pause in the proceedings.)

19 MR. HATCH: Nothing further, Your Honor.

20 THE COURT: Mr. Broccoletti?

21 CROSS-EXAMINATION

22 BY MR. BROCCOLETTI:

23 Q. Sir, you had mentioned that you were in the process of
24 interviewing two pirates who were noncooperative with you
25 when you had received the information about the RPG.

—R. Henley - Cross—

1 A. That is the correct.

2 Q. And what were the names of those two pirates?

3 A. Actually, there was only one that was being interviewed
4 that day, and that was the -- one of them was the -- the one
5 that had driven the dingy or the small boat over to the
6 Sterett, but I don't remember his name.

7 Q. Is that Abdula?

8 A. I'm not sure what his -- what his...

9 Q. Did you recover any cell phones from the Quest?

10 A. I didn't take anything from the Quest, sir.

11 Q. All right.

12 MR. BROCCOLETTI: Thank you.

13 THE COURT: Was there any attempt to locate the
14 mother ship from which the dingy left to go after the Quest?

15 THE WITNESS: There was an attempt -- are you
16 talking about the -- the -- there was -- to answer your
17 question, yes, there was an attempt.

18 THE COURT: Did they locate the mother ship?

19 THE WITNESS: They did locate the vessel that the --
20 that was, I guess, what you could call the mother ship, and
21 there was some interviews that were conducted, but I -- I
22 don't -- I wasn't a part of those interviews.

23 THE COURT: Did they capture the mother ship?

24 THE WITNESS: I believe they did, sir, but I don't
25 know the details of that.

1 THE COURT: You didn't interview any of the people
2 from the mother ship, then.

3 THE WITNESS: No, sir.

4 THE COURT: Have I raised any questions?

5 MR. HATCH: Not from the government, Your Honor.

6 MR. BROCCOLETTI: No, Your Honor.

7 THE COURT: Do you need this witness any further?

8 MR. HATCH: We'd ask he be released, Your Honor.

9 MR. BROCCOLETTI: No, sir.

10 THE COURT: You may -- you're instructed not to
11 discuss your testimony with anyone until this case is
12 complete, at which time you're free to discuss it with anyone
13 you like. You may be excused, and you are released.

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CERTIFICATION

I certify that the foregoing is a correct transcript
of an excerpt from the record of proceedings in the
above-entitled matter.

s/s

Heidi L. Jeffreys

July 31, 2012

Date

Heidi L. Jeffreys, Official Court Reporter